How a Direct Appeal Works in Texas State Courts

A General Guide to What Happens After Trial

This guide strives to explain how a criminal direct appeal in a non-death-penalty case works in Texas and what to expect at each stage — from the motion for new trial before the convicting court through a direct appeal at a Court of Appeals and, if necessary, the Texas Court of Criminal Appeals with a petition for discretionary review. The deadlines described here can move; the law allows extensions at several points for both parties' attorneys, the district clerk, or the court reporter. This is a general overview and explanation of the process, **not a prediction of the outcome of any case**.

Overall, direct appeals are very difficult to win. This is because the American criminal justice system favors finality of criminal convictions and operates on the general principle that a person gets only one trial unless a serious mistake occurred.

First, what a direct appeal actually is:

An appeal is not a second trial. No new witnesses testify, no new evidence is offered, and there is no jury. A higher court is not asked to decide all over again whether the defendant is guilty.

Instead, an appeal asks a higher court to review what happened at trial and answer a narrow question: was the trial conducted the way the law requires? The appellate judges read a written record of the trial and written legal arguments, and they decide whether a legal error occurred that was serious enough to require a new trial (or other relief). The general focus of a direct appeal is on the procedural administration of the trial, not on re-weighing the evidence.

A criminal direct appeal in Texas has two parties:

- Appellant — the side asking for review. In a criminal appeal, that is usually the defendant.
- Appellee — the side defending the conviction. That is usually the State.

A non-death-penalty criminal case can move through up to three courts: the trial court (where it started – where the conviction occurred), the Court of Appeals (the first level of appellate review), and potentially the Texas Court of Criminal Appeals (the highest criminal court in the state – the court of last resort for state criminal cases in Texas).

Stage 1 — The Motion for New Trial

Deadline to file: 30 days after imposition of sentence.

Before the appeal moves to the court of appeals, the defense has an early opportunity to ask the trial judge to undo the verdict. That request is called a *motion for new trial*. It must be filed within 30 days after sentencing. This deadline is firm and cannot be extended.

A motion for new trial does two things:

1. It asks the trial court for relief directly. If granted, the conviction is set aside and the case is tried again. The judge may hold a hearing at which the defense can present testimony and evidence — which also creates an official record of facts that may matter later on appeal.
2. It sharpens and preserves issues for the appeal and extends several of the later deadlines.

If a motion for new trial is filed, a judge has 75 days from sentencing to rule. If the judge does not rule within that window, the motion is deemed denied, which is called being "overruled by operation of law." Whether a motion for new trial is denied expressly or impliedly, the case then proceeds in an intermediate Court of Appeals. There are 14 courts of appeals in the state that hear criminal appeals.

Stage 2 — The Notice of Appeal

Deadline to file: 30 days after sentencing, or 90 days after sentencing if a timely motion for new trial is filed.

This is the short, formal document that tells the courts the defense intends to appeal the judgment — and is the formal step that begins the appeal. Once it is filed, the appeal is docketed in a Court of Appeals and given a cause number. In some cases, an appeal may be transferred to a different court of appeals to balance the courts' dockets, which is a procedure called docket equalization authorized under Tex. Gov't Code § 73.001.

Stage 3 — The Appellate Record

Deadline: 120 days after sentencing if a motion for new trial is filed, or 60 days after sentencing if one is not (extensions are common)

The appeal is decided on a written record of what happened below. The appellate judges do not hear live testimony; they read this record. It comes in two parts:

- The Clerk's Record — the paper file: the charging documents, motions, written orders,

the jury charge, the verdict, the judgment, and the exhibits.

- The Reporter's Record — the court reporter's word-for-word transcript of everything said in the courtroom: testimony, objections, rulings, and arguments.

When a motion for new trial is filed, the law gives the court reporter and clerk 120 days after sentencing to prepare and file the complete record. This record is the foundation of everything that follows: the appellate court can only consider what appears in it, which is one reason objections and rulings *at trial* matter so much.

Stage 4 — The Parties' Briefs

Appellant's brief deadline: 30 days *after* the record is filed, subject to requests for extension of time

The briefs are the written legal arguments — the heart of the appeal.

- Appellant's brief (the defense): This is where the defense lays out each claimed legal error, explains why it was error under the law, points to exactly where it appears in the record, and asks the court for relief.
- The State's brief: The State's written response defending the conviction is due 30 days after the defense's brief, subject to requests for extension. Courts will generally give the State the same amount of time that it gave the defense.
- Reply brief (***optional***). If needed, the defense may file a short reply answering the State's arguments, generally within 20 days of the State's brief unless an extension is granted.

Appellate courts routinely grant record filing extensions for court reporters and clerks. Likewise, appellate courts routinely grant attorneys' requests for extensions to file briefs; however, absent a unique situation, courts generally expect parties to file briefs within 90 days of receiving the appellate records.

Question: What issues can be raised on a direct appeal?

Not everything that happened at trial can be argued on appeal. Generally, a complaint can be raised on appeal only if it was properly raised and ruled on at trial — lawyers call this "preservation." There are limited exceptions for certain serious errors. The kinds of issues that can be raised include:

- *Constitutional violations* — for example, whether the defendant was denied the right to confront and cross-examine the State's witnesses, or whether evidence obtained through an unconstitutional search was used at trial.

- *Evidentiary rulings* — whether the trial court wrongly admitted evidence that should have been kept out, or excluded evidence that should have come in.
- *Jury-charge errors* — whether the written instructions that told the jury how to apply the law were incorrect.
- *Legal sufficiency of the evidence* — whether, taking the evidence in the light most favorable to the verdict, a rational jury could have found each element of the offense beyond a reasonable doubt.
- *Sentencing errors* — legal mistakes affecting the punishment.

For most kinds of error, even if the appellate court agrees a mistake was made, it will still ask whether the mistake was *harmful* — that is, whether it likely affected the outcome. A harmless error, which is what most errors are deemed, will not undo a conviction. But a small category of errors requires a new trial, and those are the errors that appeals focus on. Some errors, called structural errors, are considered so fundamental that they require a new trial automatically, without any harm analysis.

Some types of claims must be raised after the direct appeal process. Certain claims — most commonly, ineffective-assistance-of-counsel claims that depend on facts *outside* the trial record — usually cannot be developed on direct appeal because the record does not contain the necessary facts. Those are typically pursued later in a separate proceeding called a writ of habeas corpus, which is available after the direct appeal process concludes. The direct appeal and habeas proceeding are different kinds of proceedings and the claims available at each stage are also generally different.

Stage 5 — Decision by the Court of Appeals

An intermediate Court of Appeals is the first court to review a conviction in a non-death-penalty case.

- A panel of three justices reviews the record and the briefs.
- The court can decide to hold oral argument, where the lawyers answer the justices' questions. Even then, there are no witnesses and no new evidence — the argument is strictly about the legal issues already briefed.
- The court issues a written opinion that does one of the following: affirms (the conviction stands), reverses (for example, ordering a new trial), or modifies the judgment.

Timing varies. After briefing, a decision typically takes at least six months and often more than a year, depending on the court's docket and the complexity of the issues. There is no deadline by

when a court of appeals must decide a case so the timing varies considerably in every case.

Stage 6 — After the Court of Appeals Decision

Whichever side loses generally has two further options:

- Motion for rehearing — within 15 days of the decision, a party may ask the same court to reconsider.
- Petition for Discretionary Review (PDR) — within 30 days of the Court of Appeals' decision (or of the denial of a rehearing), a party may ask the Texas Court of Criminal Appeals to look at the case to determine if it was correctly decided by the Court of Appeals.

Stage 7 — The Court of Criminal Appeals (CCA)

The Court of Criminal Appeals is Texas's highest court for criminal cases. Its review in non-death-penalty cases is discretionary — unlike the intermediate Court of Appeals, it is not required to hear a non-death-penalty case. It reviews such cases in very small numbers, generally only those that raise issues of statewide importance or present unsettled legal questions.

- If the CCA grants a PDR, it reviews the Court of Appeals' decision, usually with another round of briefing and sometimes oral argument and issues its own written opinion.
- If it denies a petition, the Court of Appeals' decision stands.
- Either side may seek this review — including the State, if it is the one that lost below.

After Direct Appeal

- Federal courts have very strict and unfavorable rules for reviewing state convictions, but it is an option after the direct appeal process is complete.
- State 11.07 Writ of Habeas Corpus. As noted above, claims that depend on facts outside the trial record can be pursued in a separate post-conviction habeas proceeding under Article 11.07 of the Code of Criminal Procedure.

Outcome of a Successful Direct Appeal

Depending on the issue, legal relief on direct appeal can take different forms:

- Reversed and remanded for a new trial — the most common favorable result when a trial error that is harmful, or structural, is found.
- Reversed and rendered (an acquittal) — rare, and available only where the evidence was *legally insufficient* to support the conviction.
- A new punishment hearing — where the error affected only the sentencing phase of trial.
- Affirmed — the conviction and sentence stand, and the case moves (if pursued) to the next level of review, if any.

It is important to understand that most convictions are affirmed on appeal; appellate courts reverse in a minority of cases. The Office of Court Administration is the state entity that tracks criminal case disposition statistics statewide. While there is fluctuation year-to-year, generally less than 10 percent of criminal cases are reversed on direct appeal. But appeals do succeed, and the goal at every stage is to present the strongest legal grounds to get a new trial.

General Timeline of a Direct Appeal

Stage	Typical deadline
Sentencing	Starting point for most deadlines below
Motion for new trial due	30 days after sentence imposition
Notice of appeal due	30 days after sentencing (90 days if a timely motion for new trial is filed)
Last day for the trial judge to rule on the motion for new trial	75 days after sentencing
Complete appellate record due	~120 days after sentencing if a motion for new trial is filed (60 days if not); extensions are common
Appellant's (defense) brief due	~30 days after the record, subject to extension requests
State's brief due	~30 days after the defense brief subject to extension requests
Reply brief (***optional***)	~20 days after the State's brief subject to extension requests
Decision by the Court of Appeals	Several months to a year or more after briefing
Petition for Discretionary Review (if needed)	Within 30 days of the Court of Appeals' decision to the CCA

This guide describes the general direct appeal process and typical deadlines. ***It is***

provided for general understanding purposes only.

What Happens After Leaving the County Jail

Once a person leaves the county jail, they are transported to a transfer unit at the Texas Department of Criminal Justice – Institutional Division (TDCJ-ID). The length of stay varies due to a variety of factors, most significantly the length of sentence. Eventually, they are transferred to a "regular unit" to be housed for the duration of the sentence, subject to other transfers, or until granted parole.

Communication with legal counsel at TDCJ differs from that in county jails and is most often by mail and phone. Freud Law clients can correspond by mail with our office at:

Freud Law P.C., 415 W. 10th Street, Georgetown, TX 78626.

Clients can also designate a loved one to assist in staying in touch with their appellate attorney once at TDCJ. If a client gives the attorney permission to communicate with a designated loved one, she can stay in contact with that person to facilitate easier, faster communication between updates.

Our office phone number is: 254-307-3384.

At Freud Law P.C., we call and text during traditional business hours, 8 a.m. to 5 p.m., excluding holidays and weekends, unless there is an emergency. We return calls and text messages within 24 hours.